Court No.2

Civil Writ Petition No. 1241 (M/S) of 2002

Pushkar Singh Bisht …….. Petitioner.

Versus

Additional Commissioner, Garhwal Divison, Pauri & Ors. …….. Respondents.

……

Hon'ble P.C. Verma, J.

This writ petition arises out of mutation proceedings. The petitioner sought mutation on the basis of will. A registered *will* alleged to have been executed by his father in favour of the petitioner and his brothers, who are the sons of the testator. A provision has also been made with regard to the widow of the testator/deceased. Mutation proceedings were contested by the step son of testator/deceased.

Mutation was ordered in favour of the petitioner then a revision was filed by the respondent No.2- the step son of the deceased /testator. The learned Additional Commissioner after going through the entire evidence on record found the *will* to be suspicious and set aside the order passed by the Assistant Collector.

It is settled law that the mutation proceedings are summary proceedings. A question of title based on *will*, genuineness of which cannot be gone into in such proceedings, cannot be decided.

Therefore, the order passed by the Additional Commissioner cannot be sustained. However, at the same time the order passed by the Assistant Collector also cannot be sustained as the *will* was disputed. The proper forum for the petitioner was to have filed a regular suit under Section 229-B of U.P. Zamindari Abolition & Land Reforms Act, in which the question of genuineness of a *will* could be gone into. Therefore, the entire impugned orders passed by the additional Commissioner and the Assistant Collector are set aside. No

mutation shall be proceeded with until and unless the petitioner gets his title proved on the basis of alleged *will* under a regular suit filed under Section 229-B of U.P.Z.A. & L.R.Act.

With the aforesaid observations, the petition is disposed of finally.

(P.C. Verma, J.)

17.12.2002
P. Singh